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E.O. 12958: N/A
TAGS: [PGOV](#) [PTER](#) [CA](#)
SUBJECT: CANADA POISED TO TIGHTEN CRIME SENTENCING RULES

REF: TORONTO 54; TORONTO 62

1. (SBU) Summary: Although PM Harper continues to criticize sentencing provisions in Canada that permit terrorists and criminals, including at least one convicted "Toronto 18" terrorist, to obtain enhanced sentencing credit for time served in pre-trial custody, Parliament actually passed a government bill to end in-custody credit in October 2009. The government, for its own as-yet-undisclosed reasons, will not enact it until February. In 2009, the government passed only three out of its 17 justice bills. The Conservatives continue to trumpet their crime agenda and to highlight it as one of the main policy planks in the upcoming new session of Parliament. End summary.

BLAME THE LIBERALS...

2. (U) At a scheduled stop in Truro, Nova Scotia to make an infrastructure funding announcement on January 21, Prime Minister Stephen Harper unusually volunteered during a press scrum to answer a question reporters had not even asked: how did he react to public "outrage" over the latest sentence handed down in the "Toronto 18" terror case? (On January 20 a Toronto court had sentenced Amin Mohamed Durrani to one day in prison for his role in the plot after the judge reduced Durrani's 7.5 year prison sentence for time served - ref a.) PM Harper said that he understood Canadians' shock. Without addressing the specifics of the Durrani sentence, he criticized current sentencing rules that award two-for-one or even - though rarely - three-for-one credit for time in pre-trial custody. He underscored that his government would end the practice and would make criminals serve more time after conviction.

3. (U) PM Harper said that "unfortunately" a new Canadian would not apply in the latest terror sentencing. He complained that "it took us a long time" to get the law through Parliament, given that his minority government faced obstruction "in both [legislative] houses...every step of the way." He credited minority Conservative senators for fighting "pitched battles" with Liberal senators to push the bill through, arguing that Liberal senators "kept gutting" the legislation. The struggle, he said, underscored the need for more Conservative senators "to ensure that laws move faster in the future." There are currently five vacancies in the Senate that the PM may fill before Parliament returns on March 3. The appointments would give the Conservatives a 51 to 49 plurality over the Liberals in the 105-seat Senate as well as an effective, but not absolute majority in the chamber for the first time since the Conservatives took office in 2006. In a televised speech the following day to the federal Conservative caucus on January 22, PM Harper claimed that his government's tough-on-crime agenda had made Canadians "safer."

¶4. (U) The federal government had introduced a "Truth in Sentencing Act" (C-25) to eliminate pre-trial credits in March 2009. The bill provided the courts with sentencing guidance and ended credit for time served for all but exceptional cases. Specifically, the legislation capped credit for time in custody at a 1:1 ratio, with a ratio of up to 1.5:1 only where circumstances justified it and where courts could explain it. The bill eliminated extra credit under any circumstances for individuals detained because of their criminal record or because they violated bail.

¶5. (U) Impetus for the bill came from an agreement reached during meetings of justice ministers at the federal, provincial and territorial levels in 2006 and 2007. Under Canada's correctional system, defendants are held in provincial remand facilities prior to trial, conviction, and sentencing. The federal government has argued that some prisoners "game" the system by dragging out time in pre-trial custody to reduce their sentences and thereby clog remand facilities and courts. Some legal experts have argued, however, that the government's new tougher crime laws and court inefficiencies are causing the remand backlog.

C-25 NOT A LAGGARD

¶6. (U) In practice, the Truth in Sentencing Act proved to be one of the speedier bills to pass in 2009. The bill took only seven months to pass both the House of Commons and the Senate -- including the three month summer recess. The government introduced 17 justice bills in 2009, of which only three -- C-25 the Truth in Sentencing bill, C-14 to stiffen sentencing for offences committed in connection with organized crime, and S-4 to prevent identity theft -- passed into law. High-profile law-and-order bills on the government's "safe streets" agenda -- including bills to raise sentences for major crime, eliminate sentencing discounts for multiple murders, and deny access to early parole for first and second degree murderers -- were lost following the prorogation (suspension) of Parliament on December 31, which terminated all incomplete legislation. Three justice bills died in the late stages of process in the Senate.

¶7. (U) The Truth in Sentencing bill spent just over two months in the House of Commons and passed without amendment on June 8. It spent four months in the Senate (including the recess). In all, the Senate took only six working weeks to complete all stages (first, second, and third readings, as well as committee hearings) of the bill. During the hearings, Liberal senators had initially amended the bill to restore credit for time served to a maximum of 1.5:1 for pre-trial custody and 2:1 where circumstances warranted in order to preserve judicial discretion. However, Conservative senators managed to defeat the amendments (44:30) and to pass the original version of the bill on October 21. Reportedly, Liberal Leader Michael Ignatieff insisted privately that the party not be seen as "soft on crime," prompting some Liberal Senators to absent themselves from the vote. C-25 received Royal Assent (the final legislative stage) on October 22. The bill was not affected by prorogation of Parliament on December 31, 2009.

PASSED, YET NOT ENACTED...

¶8. (U) Canadian legislation carries a coming-into-force provision that varies with each bill. In the case of C-25, the bill comes into force "on a day to be fixed by the Governor-in-Council," effectively, by cabinet order. According to contacts in the Justice Minister's office, the Prime Minister's Office (PMO) told

them only on January 22 that PMO had set the coming-into-force date for February 22, 2010 -- four months after the bill received Royal Assent.

19. (SBU) Comment: The Conservatives have used the crime agenda to great effect, making it an essential part of their "brand," in spite of the fact that they have not actually passed most of their proposed crime and security legislation. The PMO apparently provided no explanation why it will end up waiting four months to enact its own sentencing credit law, but the delay has not prevented the PM from using crime -- and the bill -- as a partisan issue and to prep for imminent Senate appointments.
JACOBSON